

**1: CV 04 1493**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**LONNY SMITH and CYNTHIA**  
**SMITH, as h/w**  
**333 Wingate Court, Millersville, PA 17551**  
**vs.**  
**MARLETTE MANUFACTURING CO.**  
**30 Industrial Park Road, Lewistown, PA 17044**  
**and**  
**CLAYTON HOMES, INC.**  
**5000 Clayton Road, Maryville, TN 37804**  
**and**  
**MARLETTE SCHULT**  
**30 Industrial Park Road, Lewistown, PA 17044**  
**and**  
**MARLETTE HOMES, INC.**  
**700 Penn Ctr., 1635 Market St., Phila., PA 19103**  
**and**  
**HBOS MANUFACTURING, LP**  
**7800 McCloud Road, Greensboro, NC 27425**  
**and**  
**OAKWOOD MOBILE HOMES, INC.**  
**7800 McCloud Road, Greensboro, NC 27425**  
**and**  
**OAKWOOD SHARED SERVICES LLC**  
**7800 McCloud Road, Greensboro, NC 27425**  
**and**  
**OAKWOOD HOMES CORPORATION**  
**7800 McCloud Road, Greensboro, NC 27425**

## :JURY TRIAL DEMANDED

**:NO.**

FILED  
SCRANTON

JUL 07 2004

PER [Signature]  
DEPUTY CLERK

## CIVIL ACTION

1. The plaintiffs, Lonny Smith and Cynthia Smith, are husband and wife and citizens of the Commonwealth of Pennsylvania with their domicile being 333 Wingate Court, Millersville, PA 17551.
2. The defendant, Marlette Manufacturing Co., is a North Carolina corporation, partnership or fictitious name of an individual or individuals, with a registered place of business located at 30 Industrial Park Road, Lewistown, PA 17044.

3. The defendant, Clayton Homes, Inc., is a Tennessee corporation, partnership or fictitious name of an individual or individuals, with a registered place of business located at 5000 Clayton Road, Maryville, TN 37804.
4. The defendant, Marlette Schult, is a North Carolina corporation, partnership or fictitious name of an individual or individuals, with a registered place of business located at 30 Industrial Park Road, Lewistown, PA 17044.
5. The defendant, Marlette Homes, Inc., is a North Carolina corporation, partnership or fictitious name of an individual or individuals, with a registered place of business located at 700 Penn Ctr., 1635 Market St., Phila., PA 19103.
6. The defendant, HBOS Manufacturing, LP, is a Delaware corporation, partnership or fictitious name of an individual or individuals, with a registered place of business located at 7800 McCloud Road, Greensboro, NC 27425.
7. The defendant, Oakwood Mobile Homes, Inc., is a Delaware corporation, partnership or fictitious name of an individual or individuals, with a registered place of business located at 7800 McCloud Road, Greensboro, NC 27425.
8. The defendant, Oakwood Shared Services, LLC, is a Delaware corporation, partnership or fictitious name of an individual or individuals, with a registered place of business located at 7800 McCloud Road, Greensboro, NC 27425.
9. The defendant, Oakwood Homes Corporation, is a Delaware corporation, partnership or fictitious name of an individual or individuals, with a registered place of business located at 7800 McCloud Road, Greensboro, NC 27425.
10. At all times relevant hereto, the defendants were acting through their agents, servants and/or employees within the course and scope of their employment, and the doctrine of Respondeat Superior is invoked herein.
11. At all times relevant hereto all defendants were acting as the agents, servants,

workmen and/or employees of all other named defendants.

12. The jurisdiction of the court is hereby invoked pursuant to United States Code, Title 28, Sec. 1332, which states that the District Court shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.
13. Venue is sought in the United States District Court of the Eastern District of Pennsylvania pursuant to United States Code, Federal Statute, Title 28, Sec. 1391(a)(2), which states that a civil action wherein jurisdiction is founded on diversity of citizenship may, except as otherwise provided by law, be brought in the judicial district where a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.
14. At all times relevant hereto, defendants had under their care, direction, supervision, control and maintenance of the premises at Marlette Manufacturing Company, 30 Industrial Park Road, Lewistown, Pennsylvania, and it was the defendants' duty to keep and maintain said premises in a reasonably safe condition.
15. On or about the 3<sup>rd</sup> day of December, 2002, at or about 11:00 a.m., a dangerous, negligent and/or defective condition, existed on the defendants' premises as aforesaid and defendants knew or should have known of the existence of same.
16. On the aforesaid date, the plaintiff, Lonny Smith, was lawfully walking inside the said premises, when by reason of the negligence of the defendants, the plaintiff was caused to trip, slip, stumble and/or fall by reason of a improperly placed floor jack on defendants' premises.

7. The defendants knew or should have known of the existence of the hazardous and dangerous condition on the aforesaid premises.
8. The carelessness, recklessness, and/or negligence of the defendants consisted of the following:
  - a. Failing to maintain said premises and floor jack in a safe and reasonable condition for persons such as the plaintiff using said premises;
  - b. Failing to reasonably inspect said premises and floor jack to ascertain the existence of the negligent condition when defendants knew or should have known of the existence of said negligent condition;
  - c. Failing to warn persons on the premises of the negligent and/or defective condition;
  - d. Failing to remove said floor jack;
  - e. Negligently allowing said floor jack to remain on defendants' premises;
  - f. Failing to properly supervise persons maintaining defendants' premises;
  - g. Failing to respond to requests to repair said defective condition;
  - h. Negligently attempting to repair said defective condition;
  - i. Failing to provide adequate lighting; and,
  - j. Failing to comply with applicable safety codes.

**COUNT I**

**PLAINTIFF, LONNY SMITH VS. ALL DEFENDANTS**

9. The plaintiff, Lonny Smith, hereby incorporates by reference herein the allegations contained in the preceding paragraphs of this Complaint as though

same were fully set forth at length herein.

20. Solely because of the negligence of the defendants acting as aforesaid, the plaintiff was caused to sustain serious physical injury in and about the person, including but not limited to plaintiff's shoulder, arm and scarring, as well as a severe shock to the nerves and nervous system and was or may have been otherwise injured, whereby plaintiff has suffered and may continue to suffer in the future.
21. The plaintiff may have sustained other injuries and pre-existing conditions may have been aggravated.
22. The plaintiff avers that the injuries sustained are of a permanent nature and character.
23. As a further result of the aforesaid accident, plaintiff has been unable in the past, and is likely to continue to be unable in the future, to attend to plaintiff's usual duties, activities, vocations and avocations, all to plaintiff's great financial loss and detriment.
24. As a further result of the aforesaid accident and resultant injuries, plaintiff has expended and is in the future likely to expend substantial sums of monies for the care, treatment and attempted cure of plaintiff's injuries, all to plaintiff's great financial loss and detriment.
25. As a further result of the aforesaid accident and resultant injuries, plaintiff has been caused to undergo in the past and is likely to undergo in the future, severe pain, suffering, inconvenience and embarrassment, all to plaintiff's great financial loss and detriment.

**WHEREFORE**, plaintiff, Lonny Smith, demands judgment against defendants, Marlette Manufacturing Co., Clayton Homes, Inc., Marlette Schult, Marlette Homes, Inc., HBOS Manufacturing, LP, Oakwood Mobile Homes, Inc., Oakwood Shared Services, LLC and Oakwood Homes Corporation, jointly and severally, in a sum in excess of SEVENTY-FIVE THOUSAND (\$75,000.00) DOLLARS.

**COUNT II**

**PLAINTIFF, CYNTHIA SMITH VS. ALL DEFENDANTS**


26. The plaintiff, Cynthia Smith, hereby incorporates by reference herein the allegations contained in the preceding paragraphs of this Complaint as though same were fully set forth at length herein.
27. Plaintiff avers that she is the spouse of plaintiff, Lonny Smith.
28. As a result of the aforementioned occurrence, said plaintiff has been and may in the future be required to expend various sums of money for medical services, medicines and/or x-rays in an effort to treat and cure the spouse of the injuries sustained in the occurrence and has incurred or may incur other losses for which plaintiff is entitled to be compensated.
29. Further, by reason of the aforesaid, said plaintiff has been deprived of the assistance and society of the spouse, all of which has been to the great financial damage and loss of plaintiff.

**WHEREFORE**, plaintiff, Cynthia Smith, demands judgment against defendants, Marlette Manufacturing Co., Clayton Homes, Inc., Marlette Schult, Marlette Homes, Inc., HBOS Manufacturing, LP, Oakwood Mobile Homes, Inc., Oakwood Shared Services LLC and Oakwood Homes Corporation, jointly and severally, in a sum in excess of

SEVENTY-FIVE THOUSAND (\$75,000.00) DOLLARS.

**ROSENBAUM and ASSOCIATES, P.C.**

By: \_\_\_\_\_

  
JEFFREY M. ROSENBAUM, ESQUIRE  
Attorney for Plaintiffs

DATE: 7-6-04

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Fri Jul 9 10:00:56 2004

UNITED STATES DISTRICT COURT

SCRANTON, PA

Receipt No. 333 97438  
Cashier gina

Check Number: 34925

DO Code Div No  
4667 3

Sub Acct	Type	Tender	Amount
1:510000	N	2	30.00
2:086900	N	2	60.00

Total Amount \$ 150.00

ROSENBAUM & ASSOC, 1818 MARKET STR,  
STE 3200 PHILA, PA 19103

NEW CASE FF/SMITH VS. MARLETTE MANUF  
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Fri Jul 9 10:00:56 2004

Receipt No. 34925  
Amount 150.00